

# GAO Decision B-411728: Matter of Ernst & Young LLP (Protest) dated 14 Oct 2015

**Purpose:** Provide the rationale for the GAO decision to deny the protest of Ernst & Young (EY) LLP which challenged the issuance of a task order to PricewaterhouseCoopers (PWC) Public Section LLP by the Federal Bureau of Investigation (FBI) issued under a General Services Administration (GSA) Federal Supply Schedule (FSS).

## GAO Protest Disposition Summary

- FBI RFQ was issued to solicit offers to perform auditing services, and provided for selection of the vendor on a best-value basis considering technical factors as well as price.
  - RFQ stated that the technical factor was significantly more important than price.
  - Both offerors' prices were substantially below the agency's Independent Government Cost Estimate (IGCE).
  - FBI evaluators determined PWC to offer a more experienced staff and a more effective Management and Staffing plan.
  - The PWC price was \$9,760,589 higher than the EY price.
- EY protested on the basis that the FBI unreasonably or unequally evaluated the quotations under each of the three technical subfactors, and made a flawed selection decision.
- GAO found no merit to the grounds on which the protest was filed. Below summarizes key points from the decision:
  - Procuring agencies are afforded discretion in their evaluation of quotations. In keeping with this approach, the GAO found that the FBI did not violate its discretion and properly reviewed each offeror according to the criteria set forth in the RFQ.
  - The FBI's evaluation of each factor and subfactor was determined to have been reasonable and did not depart from the descriptions of the criteria set forth in the RFQ. Areas such as management and Staffing, Corporate Experience and Key Personnel were found to have been evaluated by the FBI in a manner which was balanced, equal and provided proper consideration of the relative strengths and weaknesses of the two offerors in relationship to the requirements detailed within the RFQ.
  - GAO emphasized the key point that a protester's argument that the cost premium is simply too large is not sufficient to establish that the best value tradeoff was unreasonable. In the present case, the substantial difference between price quotes was justified because the technical factor was "significantly more important than the price factor" under the RFQ and the SSA determined that the additional expenditure was warranted due to PWC's superior technical capability.

## Key Takeaways for the SPAWAR Claimancy:

1. Ensure that procurements planned for award on a best-value basis clearly describe the factors and subfactors for evaluation in the solicitation which is released to industry.
2. Ensure that the best-value decision is completely based upon the factors and subfactors which were identified in the solicitation.
3. Ensure that the decision is well documented in the Business Clearance Memorandum (BCM), showing how the factors and subfactors described within the solicitation were used to reach the outcome.
4. Price premiums may be justified if the RFQ/RFP specifies that technical factors are significantly more important than price factors and there is a substantial benefit which could result from selecting the more expensive offeror.

**Clearly describe factors and subfactors in solicitation, stick to them during evaluation, and document in the BCM that cost premium was justified**